

**ANNUAL REPORT
to the Commissioner
Department of Environmental Protection
July 1, 1989 -- June 30, 1990**

I. Introduction

The Board of Underground Tank Installers was established in 1985 by 32 MRSA Chapter 104-A and its authorities expanded and modified by subsequent amendments in 1987, 1989, and 1990. According to the statute, the purpose of the Board is as follows:

"In order to safeguard the public health, safety and welfare, to protect the public from incompetent and unauthorized persons, to assure the highest degree of professional conduct on the part of underground oil and underground hazardous substance storage tank installers and to assure the availability of underground oil and underground hazardous substance storage tank installations of high quality to persons in need of those services, it is the purpose of this chapter to provide for the regulation of persons offering underground oil and underground hazardous substance storage tank installation services."

Thus, the Board has two major responsibilities: (1) certifying underground tank installers and underground gasoline tank removers, and (2) taking disciplinary actions against installers and removers who violate Department rules and ethical business practices. By law, the Board is also charged with submitting an annual report to the Commissioner of the Department of Environmental Protection (32 MRSA Section 10004(6)). This report is designed to fulfill that mandate for FY 89/90. It covers the following major subject areas:

- Membership and Staffing;
- New Certifications and Testing;
- Recertification and Continuing Education;
- Processing of Complaints;
- Rulemaking and Program Development;
- Other Issues; and
- Financial Statement

II. Membership and Staffing

Members of the Board are as follows:

- Leslie Smith, Chairman (Me. Chamber of Commerce) - Term expires 12/31/90.
- Steven Jacobson (Me. Oil and Solid Fuel Board) - Term expires 12/31/90.
- James Libby (Public Member) - Term expires 12/31/92.
- Palmer Pearson (Public Member) - Term expires 12/31/90.
- Alan Prysunka (DEP) - Term expires 12/31/90.
- Richard Tuttle (Me. Oil Dealer's Assoc.) - Term expires 12/31/91.
- Ted Walker (certified installer) - Term expires 12/31/92.

James Libby is a new member this year. He was appointed January 1, 1990 to replace J. Eugene Boivin (former chairman), whose term expired December 31, 1989. Ted Walker was reappointed a second full term (in addition to a partial term he served at the creation of the Board) to the Board. Leslie Smith was elected chairman to replace Mr. Boivin in January, 1990.

James Hynson and Theresa Scott continued to provide staffing to the Board. Additional sporadic assistance was provided to the Board by other staff of the Department's Technical Services Division of the Bureau of Oil and Hazardous Materials Control, including David McCaskill (AE), James McMillan (CE I), Fred Lavallee (CE II), and Robert Peale (Geologist). Mr. McCaskill left the Department and has been replaced by Ms. Marianne Hubert, whose job duties will include in part providing engineering support to the Board.

Mr. Philip Pimentel completed his contract obligations to the Board to conduct on-site examinations in order to resolve the problem of high demand vs. low staff time to conduct such exams. Although 1989 legislation (P.L. 1989, c. 312) replaced on-site examination requirements for underground oil tank installer applicants with apprenticeship, a need continued to conduct on-site examinations for applicants who had passed the initial written examination prior to enactment of the apprenticeship program.

III. New Certifications and Testing

This section includes discussions on (A) number of installers certified, (B) written exams, and (C) on-site exams.

A. Number of Installers Certified

For the first time since the tank installer certification program began, the number of certified installers declined to 239 from the 262 that were certified at the end of FY 88/89. At present, all installers hold Class 2 underground oil storage tank certificates, by virtue of 32 MRSA Sec. 10006.3.E. In large measure, this decline occurred because 33 installers who became certified when the program was initiated or soon thereafter did not apply for recertification or had not met statutory and regulatory continuing competency requirements when the vast majority of certificates expired in May, 1990. A smaller decline of two installers was caused by disciplinary actions discussed subsequently. Exacerbating this condition is the fact that significant changes to the Board's legislative mandate for certification made in 1989 and 1990 created a need for significant program modification before a certification process could be offered again.

B. Written Exams

As stated previously, new legislative mandates required the Board to begin significantly modifying its certification program before being able to again offer written examinations. However, we were able to offer one initial written examination for underground oil storage tank installer applicants on June 29, 1990.

Seventeen (17) applicants took the June 29 examination, and thirteen (13) passed. That represents a decline from the approximate average of fifty (50) per examination which we have experienced in the past. Two possible explanations exist for this decline: (1) we have already certified the vast majority of individuals who wish to engage in underground tank installation, and/or (2) the new certification requirements set by P.L. 1989 c. 312 and P.L. 1990 c. 845 may be less attractive to potential applicants than the old system. Although the Board has been able to offer the initial examination for oil tank installer applicants, considerable effort remains before the entire program is completely in place. Final examinations must be written for all three classes of underground oil storage tank installer certifications, as well as initial examinations and on-site examination checklists for underground hazardous substance tank installers and underground gasoline tank removers.

Since Department of Environmental Protection (DEP) regulations for the installation of underground hazardous substance tanks (06-096 CMR c. 695) were promulgated January 29, 1990, a lack of regulations upon which to base this examination is no longer a limiting factor. However, interest in this certificate by potential applicants remains negligible.

In addition to the need to develop new examinations, we anticipate considerable effort will be needed to revise our existing materials due to numerous changes in the body of knowledge used to develop the examinations. The enactment of P.L. 1990 c. 865, which significantly alters DEP's mandate for regulating underground oil tanks, created a need for the Department to significantly amend its regulations on underground oil tanks. Once promulgated, these amendments will significantly change the Board's tests. Significant changes are also in progress or expected for the nationally accepted and manufacturer's recommended practices, installation instructions, and codes which the Board uses as reference material for its examinations. The nationally accepted recommended practices and codes we expect to see modified in the very near future include, but are not limited to those published by the Petroleum Equipment Institute (PEI RP/100), the American Petroleum Institute (API RP 1615 and API RP 1632), and the National Fire Protection Association (Codes 30 and 31).

However, barring unforeseen events and significant strain on staff time, we hope to be able to offer all examinations by the fall of 1990.

C. On-Site Exams

As stated previously, a number of applicants who passed the initial exam for oil tank installer certification in the spring of 1989 were eligible for on-site examinations under the old certification program in FY 89/90. Twenty (20) examinations were conducted between July and December 1989. Of those examinations, seventeen (17) applicants passed and became certified as Class 2 underground oil storage tank installers.

IV. Recertification and Continuing Education

Of the 262 installers who were certified to install underground tanks at the end of FY 88/89, 243 of them held certificates which expired in FY 89/90. Of those, 210 applied and were granted certificates, while 33 did not reapply. Eight (8) individuals applied but had not met the Board's continuing education requirement, and thus disciplinary action ensued and resulted in the Board granting them the ability to obtain probationary certificates (conditional upon them making up needed continuing education by the end of 1990) upon payment of civil penalties. Four (4) former installers have subsequently applied for reinstatement after failing to submit applications for renewal, and the Board is currently considering those applications.

The Board co-sponsored (with the Maine Oil Dealers' Association) one seminar accredited for five (5) hours on December 14, 1989 at the Augusta Civic Center. In addition, the Board granted four (4) hours credit to a Red Jacket Leak Detector seminar presented on three occasions (January 22 in Portland; April 23 and 24 in Augusta), four (4) hours credit for a seminar sponsored by Adams and Fogg Equipment Co. and presented twice on March 15 in Augusta, eight (8) hours credit to a short course offered periodically at the University of Wisconsin, two (2) hours credit offered whenever requested by six (6) or more installers sponsored by FEDCO Inc. and A.O. Smith Piping Co, and six (6) hours credit to a workshop offered by Petcon, Inc. and scheduled to be offered in the fall of 1990.

The Board denied credit for one installer to receive credit for attendance at a workshop sponsored by Northeast Mechanical Sales in Portland on February 14 because sufficient information for the Board to assess the content of the workshop was not provided. We also denied credit for an after the fact application by Owens-Corning Fiberglass for workshops held May 2 and 4 in Bangor and Portland.

V. Processing of Complaints

Disciplinary actions for four (4) installers and one (1) applicant initiated in FY 88/89 were concluded in FY 89/90. In one case, the installer had received nine (9) complaints including various incidents of improper installation, failure to be present on-site during installations, and a failure to report a discharge. Before the Board could complete action, this installer's certificate expired and he chose not to renew it. Referral of one case involving several instances of unsafe gasoline tank removal to Administrative Court resulted in the installer's certificate being revoked. A consent agreement involving a voluntary six (6) month suspension resolved complaints against one installer who failed to be present at an installation and committed two significant violations of technical tank installation standards. Complaints against the fourth installer for the use of improper backfill proved groundless, while a complaint against an applicant for advertising himself as an installer was resolved with a letter of warning.

Complaints against twenty (20) installers were received in FY 89/90. The Board has resolved fourteen (14) of these, and continues to consider five (5). One installer has appealed to Superior Court a Board decision to refuse to renew his certificate because of failure to report a discharge.

Of the fourteen (14) cases resolved, two installers received letters of warning for incorrect information on tank removal forms. After a hearing regarding a complaint for discharging oil from an underground tank onto surface waters, one installer elected not to apply for recertification. Lack of evidence precluded pursuing charges against two installers charged of discharging oil or gasoline. One minor violation involving installing an improper fill cap was resolved with a letter of warning. Finally, eight (8) installers who had not met the Board's continuing education requirement for recertification were issued civil penalties and allowed to receive probationary certificates, conditional upon them completing their required continuing education by the end of 1990.

The enactment of P.L. 1990, c. 845 greatly broadened the Board's disciplinary authority in April, 1990. We are addressing this issue in our rules, discussed in the next section.

VI. Rulemaking and Program Development

P.L. 1989, c. 312, enacted at the end of FY 88/89 significantly altered the Board's certification program, and thus has required considerable effort this past year in amending our rules and our program. The major changes caused by that Legislation were:

(1) Replacement of a single oil tank installer certificate with three classes of certificates;

(2) Instituting certification requirements for oil tank installers which include an initial examination, apprenticeship, and a final examination; and

(3) Establishing a certification program for underground gasoline tank removers which included an initial examination and an on-site examination.

Because we felt this new Legislation had several significant flaws, we delayed rulemaking action until January, 1990. Those flaws were:

(1) Requirements for Class 1 oil tank installer certificates included provisions for experience with impressed-current cathodic protection. Since impressed-current cathodic protection is generally not practiced in Maine, such requirements made the ability of applicants to qualify for this certificate remote;

(2) Since the statute did not grant provisional certificates to applicants for underground gasoline tank remover certificates, on-site examinations for such certificates could not be legally accomplished; and

(3) On-site examinations for gasoline tank removers using real gasoline tanks constituted employee and public safety hazards.

These issues were resolved by P.L. 1990, c. 845 enacted in April 1990. This bill also significantly broadened the Board's latitude in taking disciplinary action. As a result, we were able to proceed at that time with the rulemaking necessary to implement our new Legislative mandates. Due to the changing statutes, however, our rulemaking efforts have had to be undertaken in a number of steps.

On January 29, 1990 the Board proposed amendments and new rules to implement P.L. 1989, c. 312. Since P.L. 1990, c. 845 had not yet been enacted, these rules could not address the flaws identified previously in this section nor could they deal with the broadened disciplinary powers which would come later. However, the Board felt a need to accomplish what it could until such time as its issues could be resolved. A public hearing was held March 9 on these rules and the comment period extended to March 30. The rules were adopted on May 18 and became effective June 13.

Needed amendments to the January 29 rules as well as rules for certification of underground gasoline tank removers were proposed on the same day the January 29 rules were adopted. The comment period on these amendments and rules extends to July 20, 1990. At the same time, these same amendments were adopted on an emergency basis and became effective for 90 days June 8. As a result of this somewhat complex rulemaking process, we are able to move ahead in our program development and implementation rather than wait for our final rules to wind their way through the rulemaking process.

VII. Other Issues

Issues which continued this year are (1) plans for publishing a newsletter, and (2) data management. One of the initial benefits of certification of installers was the development of an ability by the State to communicate with installers via a newsletter. Due to the lack of staff and a significant effort required for development, the Board has still been unable to date to initiate a newsletter. While the effort to implement program changes based on recent legislation will probably further delay the development of a newsletter, we hope to be able to offer one by the end of FY 90/91.

Difficulties in obtaining quality, current information has continued to increase, but some steps have been taken to resolve this problem by developing a database have occurred. ORACLE™, a database software package, has been installed on an IBM Model 60 personal computer owned by the DEP Bureau of Oil and Hazardous Materials Control Division of Technical Services. It is our understanding that this same system is to be installed in the DEP's main computer within a year. Staff has been trained in database development for this software package, and has preliminarily developed and installed a database for the Board on the Technical Services' personal computer. Additional effort will be required to assess this database before data are actually entered. Until such time as the software is installed on the main computer or the Board is able to obtain its own personal computer capable of handling the software, staff will have to share use of the Technical Services' computer with other employees of the Division.

VIII. Financial Statement

The Board's financial statement for FY 89/90 is provided in Table 1. Several points should be considered when examining these data. First, income is estimated, based upon the number of people who applied for certification, took the various tests, became certified, were recertified, or were issued civil penalties. This was necessary because actual income to the Board is lumped with other underground tanks income in the Department's accounting system. Second, the income shown for recertification varies widely on a biennial basis. Recertification is required every two (2) years, and this income for this year reflects the vast majority of tank installers becoming recertified this year. It is therefore expected that this figure will follow two (2) year cycles of being high and low.

In order to resolve a continuing problem of shortfalls, the Board took the recent opportunity of rulemaking (discussed above) to increase its fee structure thereby hopefully increasing revenue. This was accomplished so that other contributors to the Ground Water Cleanup Fund would not have to subsidize the Board's functions as significantly.

Respectfully Submitted,

Leslie Smith,

Chairman

Income (Estimated)

Applications/Written Examinations \$ 3,400.00

Sales of Study Packets 245.00

On-Site Examination Fees 1,900.00

New Certifications 1,600.00

Recertifications 13,700.00

Late fees/recertification 20.00

Civil Penalties 1,000.00

Subtotal 21,865.00

Expenses: Account 014 06A 1520 44x

Personal Services 46,772.46

Fringe 14,475.53

Contractual 19,207.58

Travel 1,695.40

Supplies 247.25

Other 3,571.85

Sta-Cap 3,047.82

Subtotal 89,017.89

Grand Total -67,152.89

Table 1. Financial statement for the Board of Underground Tank Installers, July 1, 1989 through June 30, 1990.